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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA License No.: 413-1104
)	
THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
)	PURSUANT TO FINANCIAL CODE
Complainant,)	SECTION 50321 AND NOTICE OF INTENT
)	TO MAKE ORDER FINAL
v.)	
)	
TOP FLITE FINANCIAL, INC.,)	
)	
Respondent.)	
)	
)	

The Complainant is informed and believes and based upon such information and belief,
alleges and charges as follows:

I.

Introduction

1. Top Flite Financial, Inc. (Top Flite) is a residential mortgage lender licensed by the
Commissioner of Business Oversight (Commissioner) pursuant to the California Residential
Mortgage Lending Act (Fin. Code § 50000 *et seq.*) (CRMLA).

2. Top Flite has a principal place of business located at 123 East Grand River Avenue, Williamston, Michigan 48895.

II.

CRMLA Violations

3. On or about September 9, 2016, the Commissioner commenced a regulatory examination of the books and records of Top Flite under the CRMLA (2016 regulatory exam). A review of Top Flite's trust fund handling procedures disclosed that it was receiving escrow funds in a main checking account and waiting up to seven days before depositing them into the designated trust account, resulting in commingling of escrow funds with operating funds, in violation of Financial Code section 50202, subdivision (a).

4. The 2016 regulatory examination disclosed that Top Flite did not maintain a trust account ledger card for each account detailing receipts and disbursement of all funds associated with the borrower in connection with the origination of any mortgage loan, namely, a trust account ledger card for its appraisal trust account, as required by California Code of Regulations, title 10, section 1950.314.1, subsection (a).

5. On or around December 21, 2016, Top Flite was notified of the findings in the 2016 regulatory exam, including the violations of Financial Code section 50202, subdivision (a) and California Code of Regulations, title 10, section 1950.314.1, subsection (a). Top Flite was directed to take corrective actions and provide the unaudited financial statements including the balance sheet, detailed trial balance, bank statements, corresponding bank reconciliations, and detailed loan level subsidiary ledgers for all trust accounts as of November 30, 2016.

6. On or around January 9, 2017, Top Flite responded that it had implemented corrective action for the noted violation of Financial Code section 50202, subdivision (a), indicating that "[b]orrower payments are processed same day and now deposited to Mortgage Operations Trust Account directly and not into main checking account . . . ,” and provided supporting documentation.

7. However, Top Flite did not provide detailed loan level subsidiary ledgers for its appraisal trust account. Top Flite's portfolio ledger for "All Accounts" lacked a detailed loan level

1 subsidiary ledger for its appraisal trust account showing receipts and disbursements of appraisal
2 funds associated with the borrower, as required by California Code of Regulations, title 10, section
3 1950.314.1.

4 III.

5 Applicable Law

6 8. Financial Code section 50202, subdivision (a) provides:

7 (a) Escrow funds for a purpose authorized by the residential mortgage
8 loan contract (1) shall be subject to and satisfy all applicable state and
9 federal requirements, including Section 2609 of the federal Real Estate
10 Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et
11 seq.) and all applicable provisions of the Civil Code, (2) shall be
maintained in a depository institution as described in subdivision (b), and
(3) may not be commingled with a licensee's funds.

12 9. California Code of Regulations, title 10, section 1950.314.1 provides, in relevant
13 part:

14 (a) A residential mortgage lender, residential mortgage lender and
15 servicer, or residential mortgage loan servicer shall establish, and maintain
current, the following books with reference to its trust accounts:

16 (1) A trust account ledger card for **each account** detailing receipts and
17 disbursement of all funds deposited by the borrower, lender or seller with
18 the licensee in connection with the origination, closing or servicing of any
mortgage loan. The funds shall be held in accordance with the terms of a
19 written agreement between the licensee and such borrower, lender or seller
which provides that upon the occurrence of a specific condition or event,
20 the funds or a portion thereof shall be disbursed to the borrower, lender or
seller.

21 (2) Liability controlling account . . .

22 (b) The records referred to in subsections (a)(1) and (2) shall be
23 reconciled at least once each month with the bank statements of the trust
24 account. The records referred to in subsection (a)(1) shall be reconciled at
25 least once each week with the liability controlling account referred to in
26 subsection (a)(2) . . . (Emphasis added)

27 10. Financial Code section 50321 provides:

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1 If, after investigation, the commissioner has reasonable grounds to believe
2 that any licensee has violated its articles of incorporation or any law or
3 rule binding upon it, the commissioner shall, by written order addressed to
4 the licensee, direct the discontinuance of the violation. The order shall be
effective immediately, but shall not become final except in accordance
with the provisions of Section 50323.

5 11. Financial Code section 50323 provides:

6 (a) No order issued pursuant to Section 50321 or 50322 may become final
7 except after notice to the affected licensee of the commissioner's intention
8 to make the order final and of the reasons for the finding. The
9 commissioner shall also notify the licensee that upon receiving a request
10 the matter will be set for hearing to commence within 15 business days
11 after receipt. The licensee may consent to have the hearing commence at a
12 later date. If no hearing is requested within 30 days after the mailing or
13 service of the required notice, and none is ordered by the commissioner,
14 the order may become final without hearing and the licensee shall
15 immediately discontinue the practices named in the order. If a hearing is
16 requested or ordered, it shall be held in accordance with the provisions of
17 the Administrative Procedure Act (Chapter 5 (commencing with Section
18 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the
19 commissioner shall have all of the powers granted under that act. If, upon
20 the hearing, it appears to the commissioner that the licensee is conducting
21 business in an unsafe and injurious manner or is violating its articles of
22 incorporation or any law of this state, or any rule binding upon it, the
23 commissioner shall make the order of discontinuance final and the
24 licensee shall immediately discontinue the practices named in the order.

25 (b) The licensee has 10 days after an order is made final to commence an
26 action to restrain enforcement of the order. If the enforcement of the order
27 is not enjoined within 10 days by the court in which the action is brought,
28 the licensee shall comply with the order.

12. By reason of the foregoing, Top Flite Financial, Inc. has violated Financial Code
section 50202 and California Code of Regulations, title 10, section 1950.314.1.

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1 WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue
2 Violations Pursuant to Financial Code section 50321 and notifying Top Flite Financial, Inc. of her
3 intention to make the order final.

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5 Dated: September 8, 2017
6 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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8
9 By: _____
10 Sophia C. Kim
11 Senior Counsel
12 Enforcement Division
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